

TO: Mail Stop 8 Director of the U.S. Patent and Trademark Office P.O. Box 1450 Alexandria, VA 22313-1450	REPORT ON THE FILING OR DETERMINATION OF AN ACTION REGARDING A PATENT OR TRADEMARK
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In Compliance with 35 U.S.C. § 290 and/or 15 U.S.C. § 1116 you are hereby advised
that a court action has been filed in the U.S. District Court San Diego on the following Patents or Trademarks:

DOCKET NO. 07-CV-2000-H-CAB	DATE FILED 10/16/2007	U.S. DISTRICT COURT Southern District of California
PLAINTIFF LUCENT TECHNOLOGIES, INC., et al	DEFENDANT GATEWAY, INC., et al	
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.
1 See attached 4,138,322	6	11
2 4,958,226 4,617,676	7	12
3 4,910,781 4,701,454	8	13
4 4,763,386 4,649,131	9	14
5 5,134,295 4,317,956	10	15

In the above-entitled case, the following patent(s)/trademark(s) have been included:

DATE INCLUDED	INCLUDED BY <input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading		
PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	PATENT OR TRADEMARK NO.	
1 4,439,759	6	11	
2	7	12	
3	8	13	
4	9	14	
5	10	15	

In the above-entitled case, the following decision has been rendered or judgment issued:

DECISION/JUDGMENT <i>attached</i>		
CLERK W. Samuel Hamrick, Jr.	(BY) DEPUTY CLERK <i>Abraham Garcia</i>	DATE 4/15/08

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

**LUCENT TECHNOLOGIES, INC.,
MULTIMEDIA PATENT TRUST., et
al.,**

Plaintiffs & Counter-Defendants,

vs.

GATEWAY, INC, et al.,

Defendants and Counter-Claimants,

and

**MICROSOFT CORPORATION,
Intervenor and Counter-Claimant,**

AND CONSOLIDATED CASES

**CIV. NO. 02-2060-B (CAB)
consolidated with
Civil No: 03CV0699-B (CAB) and
Civil No: 03CV1108-B (CAB)**

**ORDER SEVERING AND
TRANSFERRING PART OF CASE**

On the Court's own motion and due to the under-signed's inactive status, the Court is severing part of this patent infringement case for transfer to another District Judge, but is retaining jurisdiction over other parts. The severed parts will be assigned a new case number and transferred to a randomly-assigned District Judge. The Court notes, however, that on March 19, 2007, when this Court was returning its docket to the draw in preparation for its quasi-retirement, District Judge Marilyn L. Huff was randomly-assigned a recent, related patent case between the same parties. *Lucent Technologies, Inc. v. Microsoft Corp*, 06-CV-

1 684-H (CAB); *see* Clerk's Docket No. 61 from 06-CV-684. Thereafter, on April 6, 2007,
2 pursuant to the Local Rule governing related cases, a second case, *Multimedia Patent Trust v.*
3 *Gateway, Inc.*, 07-CV-747-H (CAB), was low-numbered to Judge Huff. Civil Local Rule
4 40.1; *see* Clerk's Docket Nos. 4-6 in 07-CV-747.

5 As previously discussed, and pursuant to division of these consolidated cases into five
6 groups (*See* Court's Scheduling Order [Docket Nos. 374, 377 & 388]), the under-signed will
7 continue to retain jurisdiction over certain matters.

8 **Group 1:** This group contains two patents related to compression of video coding
9 (U.S. Patent Nos. 4,383,272 and 4,958,226). All outstanding issues, including trial, on these
10 two patents are severed and transferred to the new case number.

11 **Group 2:** This group contains two patents related to audio coding technology (U.S.
12 Patent Nos. 5,341,547 and RE 39,080). The Court presided over the jury trial of these two
13 patents as well as post-judgment motions and entered a partial judgment pursuant to Fed. R.
14 Civ. P. 54(b). [# 1975, 1976, & 1977] Cross appeals are pending. [# 2027 & 2088] (Federal
15 Circuit Docket Nos. 2007-1546 & 2007-1580). Thus, the Court retains jurisdiction over
16 these two patents.

17 **Group 3:** This group originally contained three patents on speech coding but two
18 were dismissed by stipulation of the parties (U.S. Patent No. 4,617,676) [# 332, 334, 348, &
19 437]; U.S. Patent No. 4,910,781 [# 330, 333, 343, & 578]).

20 As to Patent No. 4,701,954, the Court entered summary judgment of non-infringement
21 in favor of Defendants'; ruled on certain affirmative defenses and counterclaims; and entered
22 a Rule 54(b) partial judgment. [# 450, 844, 845, 846, 1225, & 1261] Those matters are
23 pending on appeal. [# 1553, 1555, & 1736.] (Federal Circuit Docket Nos. 2007-1338, 2007-
24 1336, & 2007-1337). Thus, the Court retains jurisdiction of the remaining patent in this
25 group (U.S. Patent No. 4,701,954).

26 **Group 4:** This group contained four patents on computer devices and software
27 programs (Nos. 4,763,356; 4,649,131; 5,347,295; and 4,317,956). **This group is split.**

28 The Court entered summary judgment of no infringement on two of the four patents in

1 this group of patents (U.S. Patent No. 4,649,131 and 4,317,956). As to U.S. Patent No.
2 4,317,956, the Court entered partial judgment pursuant to Rule 54(b). [# 1253] Although the
3 parties filed notices of appeal, they dismissed them. [# 1554, 1701, 1723, 1735, 1827, 1996]
4 (Federal Circuit Docket Nos. 2007-1335 & 2007-1338) Thus, there is no need to transfer
5 that closed matter. As to U.S. Patent No. 4,649,131, the Court entered partial judgment
6 pursuant to Rule 54(b) and an appeal is pending. [#1231, 1251, 1815, 1840] (Federal Circuit
7 Docket No. 2007-1376). Thus, the Court retains jurisdiction over this patent.

8 All matters pertaining to the other two patents (U.S. Nos. 4,763,356 & 5,347,295),
9 including trial, are severed and transferred to the new case number.

10 **Group 5:** This miscellaneous group contains two patents. **This group is split.**

11 All outstanding issues, including trial, on U.S. Patent No. 4,439,759 (Fleming) are
12 severed and transferred to the new case number.

13 The Court retains jurisdiction over the other patent (U.S. Patent No. 4,582,956)
14 (Doughery). An appeal is pending on this Court's partial judgment [# 2024, 2027, & 2078]
15 (Federal Circuit Docket No. 2007-1546), and the Court has denied the motion for attorney's
16 fees *without prejudice to renewal* depending upon the outcome of the appeal. [# 2080 &
17 2117]

18 For those parts of the case retained by this Court, the above-captioned case number
19 remains the same. The parties shall continue to contact this Court's chambers for those
20 matters on which this Court has retained jurisdiction, such as mandate hearings.

21 The Court orders that all outstanding matters as to U.S. Patent No. 4,383,272 (Group
22 1); U.S. Patent No. 4,958,226 (Group 1); U.S. Patent No. 4,763,356 (Group 4); U.S. Patent
23 No. 5,347,295 (Group 4); and U.S. Patent No. 4,439,759 (Group 5) be severed and
24 transferred for further proceedings, including trial. **The Clerk shall assign a new case**
25 **number to the severed portion based upon this Order and shall docket a copy of this**
26 **Order as the first entry.**

27 Because the 02-CV-2060 Docket contains many documents that may affect the five
28 patents transferred to the new case number, *further Orders regarding the docketing of the*

1 *new case will necessarily follow* (including pending motions such as Docket Nos. 1288
2 (Microsoft's Motion in Limine No.12 on Group 4 patents), 2049 (Dell's Motion for
3 Summary Judgment of No Willful Infringement on Group 1, 4, & 5 patents), 2053 (same, for
4 Microsoft), 2056 (same, for Gateway), 2130 (equipment order), and 2136 (motion to seal)).
5 In any event, *the parties are permitted to refer to documents previously filed and docketed in*
6 *02-CV-2060* at any time and for any purpose in future proceedings on the severed portion of
7 this case (e.g., designation of record for appeal).

8 Once the Clerk has opened the new case number, the Clerk shall terminate these
9 consolidated proceedings in the above-captioned case, 02-CV-2060, and its member cases,
10 03-CV-699 and 03-CV-1108.

11 **IT IS SO ORDERED.**

12 DATED: October 16, 2007



Hon. Rudi M. Brewster
United States Senior District Judge

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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 **LUCENT TECHNOLOGIES, INC. and**
12 **MULTIMEDIA PATENT TRUST**

13 Plaintiffs and Counter-
14 Defendants,

15 vs.

16 **GATEWAY, INC., et al.**

17 Defendants and Counterclaimants.

18 and

19 **MICROSOFT CORPORATION,**

20 Intervenor and Counterclaimant
21

22 **AND RELATED CLAIMS**
23

CASE NO. 07-CV-2000-H (CAB)
consisting of matters severed from
the consolidated cases:
CASE NO. 02-CV-2060-B (CAB)
CASE NO. 03-CV-0699-B (CAB)
CASE NO. 03-CV-1108-B (CAB)

**ORDER DENYING MOTIONS
FOR ATTORNEYS' FEES**

[Doc. Nos. 854, 858.]

24 On July 3, 2008, Microsoft and Dell submitted motions for attorneys' fees
25 regarding the Haskell '226 and Fleming '759 patents, respectively. (Doc. Nos. 854,
26 858.) The parties filed their oppositions and reply briefs, and the Court submitted these
27 motions on the papers. (See Doc. Nos. 903-04, 913, 931-32.) Both motions ask the
28 Court to determine that this is an "exceptional" case warranting an award of attorneys
fees under 35 U.S.C. § 285.

1 The Court concludes that neither movant has offered clear and convincing
2 evidence that this was an exceptional case warranting an award of fees. See,
3 e.g., Interspiro USA, Inc. v. Figgie Int'l, Inc., 18 F.3d 927, 933 (Fed. Cir. 1994)
4 (requiring showing of exceptional case by clear and convincing evidence). The Court
5 does not find clear and evidence that the claims in question were objectively baseless,
6 maintained in bad faith, or otherwise exceptional. Indeed, the Court has previously
7 noted its view that both sides presented strong arguments and that the Court was
8 persuaded differently than the jury on some issues, though not to an extent requiring the
9 Court to disturb the verdict. (See generally Order on Post-Trial Matters, Doc. No. 852.)
10 Furthermore, even if the case could be deemed exceptional, the Court would exercise
11 its discretion not to award fees under all the circumstances of this litigation. See, e.g.,
12 Interspiro USA, Inc., 18 F.3d at 933-34 (holding that trial court has discretion to deny
13 fees even after finding that case is exceptional).

14 Accordingly, the Court DENIES both pending motions for attorneys' fees.

15
16 IT IS SO ORDERED.

17 DATED: August 7, 2008

18 
19 MARILYN L. HUFF, District Judge
20 UNITED STATES DISTRICT COURT

21 COPIES TO:
22 All parties of record.
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